

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

IN RE: NEW ENGLAND
COMPOUNDING PHARMACY, INC.
PRODUCTS LIABILITY LITIGATION

MDL No. 13-02419-RWZ

THIS DOCUMENT RELATES TO:

All Cases.

**THE POST-CONFIRMATION OFFICER’S MOTION FOR LEAVE TO FILE
SURREPLY TO THE TENNESSEE CLINIC DEFENDANTS’ REPLY TO HIS
OPPOSITION TO THE MOTION TO COMPEL COMPLIANCE WITH SUBPOENA**

Pursuant to LR, D. Mass. 7.1(b)(3), Paul D. Moore, the Post-Confirmation Officer¹ (the “Post-Confirmation Officer”) of New England Compounding Pharmacy, Inc. (“NECC”), hereby moves for leave of this Court to file his *Surreply to the Tennessee Clinic Defendants’ Reply to His Opposition to the Motion to Compel Compliance with Subpoena Duces Tecum to NECC* (the “Surreply”).

In support of this Motion, the Post-Confirmation Officer respectfully states as follows:

1. The Tennessee Clinic Defendants² served the Subpoena [Dkt. No. 1782] on the Chapter 11 Trustee on April 17, 2015.
2. On May 1, 2015, the Chapter 11 Trustee served the Tennessee Clinic Defendants with his Subpoena Responses and Objections [Dkt. No. 1813].

¹ The Post-Confirmation Officer formerly served as the chapter 11 trustee of NECC, and, in that capacity is herein referred to as the “Chapter 11 Trustee.”

² Unless otherwise set forth herein, capitalized words shall have the meaning ascribed to them in *The Post-Confirmation Officer’s Opposition to the Tennessee Clinic Defendants’ Motion to Compel Compliance with Subpoena to NECC* (the “Opposition”) [Dkt. No. 2227].

3. On August 25, 2015, the Tennessee Clinic Defendants filed their Motion to Compel, in which they attacked the Chapter 11 Trustee's Responses and Objections to their Subpoena and requested that he be compelled to provide them with an index of all of the documents that NECC had produced in the MDL proceeding.

4. The Post-Confirmation Officer filed his Opposition to the Tennessee Clinic Defendants' Motion to Compel on September 8, 2015 [Dkt. No. 2227], in which he defended his Responses to the Subpoena and stood on his Objections.

5. A hearing on the Tennessee Clinic Defendants' Motion to Compel was then scheduled for October 14, 2015.

6. On October 7, 2015, with leave of this Court, the Tennessee Clinic Defendants filed their *Reply Re: Motion to Compel Compliance with Subpoena to NECC [Dkt. 2190]* [Dkt. No. 2308].

7. Post-Confirmation Officer respectfully submits that the Surreply, a copy of which is attached hereto as Exhibit A, will aid this Court in its consideration of the Tennessee Clinic Defendants' Reply and Motion to Compel.

8. The Tennessee Clinic Defendants have not given their consent to the filing of the Surreply.

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WHEREFORE, the Post-Confirmation Officer respectfully requests that this Court grant him leave to file his Surreply, which is attached hereto as Exhibit A.

Respectfully submitted,

PAUL D. MOORE, THE POST-
CONFIRMATION OFFICER OF NEW
ENGLAND COMPOUNDING
PHARMACY, INC.,

By his attorneys,

/s/ Michael R. Gottfried

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Dated: October 9, 2015

Certificate of Service

I, Michael R. Gottfried, hereby certify that on this day, October 9, 2015, I caused a copy of the foregoing document and the attached exhibit, which were filed using this Court's ECF system, to be served electronically upon all of those parties registered to receive ECF service.

/s/ Michael R. Gottfried